IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.2805 of 2003

1. Smt.Hirabai Laxmanrao Kadam
and others ..Petitioners

vs.

1. Smt.Sandhya Vijay Kadam
and others ..Respondents

Shri A.A.Kumbhakoni for petitioner.
Shri Vijay Patil for respondent no.1.

CORAM: S.C.DHARMADHIARI J.
5th December,2007

P.C.

1. This is a writ petition which challenges an order passed by the Trial Court on 13th September, 2003 below Exh.95 so also the order passed on the same day below Exh.99. Both these exhibits/applications are in Special Civil Suit No.1873 of 1998. The said suits are on the file of the Civil Judge, Sr.Dn., Pune.

2. Shri Kumbhakoni, learned Counsel appearing for the petitioners, submits that the parties to these suits had arrived at a compromise on 30th April, 2001. Those compromise terms were sought to be placed on record of the Trial Court by the parties, namely, petitioners so as to enable the Court below to pass appropriate orders upon it under Order 23 of the Code of Civil Procedure.

While it may be true that the application Exh,.87 which was preferred by the original plaintiff has technically not remained on file on account of the orders made thereon, yet, it is a common ground that Exh.99 was an application which was preferred by the original plaintiff Sandhya Kadam and the said application prayed that the original defendants have secured her signature on the compromise terms/purshis Exh.87 by fraud and she is not agreeable to the suit being disposed of in terms of the consent terms. Rather, she claimed a declaration that the terms be declared as illegal, null and void. She filed this application on 15th April, 2002 to which the present petitioners filed a detailed reply on 289th June, 2002 and prayed that the compromise terms be taken on record and decree be passed in terms thereof by the civil court. That request has been turned down by the impugned order and in the mean while the plaintiffs proceeded with the suit, applied for injunction vide Exh.95 and that injunction order has been granted by the Trial Court.

3. Aggrieved by these orders the present petition under Article 227 of the Constitution of India is preferred.

4. During the course of arguments, the parties agree before me that instead of the stalemate continuing it would be appropriate and just if the request of the present petitioners to pass a decree by taking the compromise terms on record be revived. That application may be technically disposed of but both sides do not dispute that the same issue is involved in the application preferred by the original plaintiff (Exh.99) and if Exh.99 stands revived to file of the Court, both aspects namely the legality and validity of the consent terms and request made on behalf of the present petitioners to pass appropriate orders based in terms thereof can be considered afresh.

5. I see no reason to reject this reasonable request in as much as Order 23 of the Code of Civil Procedure and particularly Order 23 Rule 3 provides that when the parties place on record the consent terms and request that order be made in terms thereof, the Court is obliged to satisfy itself with regard to the aspects enumerated in Order 3 Rule 3. Keeping that application pending serves no purpose. Ultimately, on the result of the said application

depends the fate of the suit. Either the suit can proceed or the suit itself comes to an end. Instead of keeping the matters pending here, it would be appropriate, therefore, to direct that the Trial Court should revive Exh.99 and pass such orders thereon as are permissible in law after hearing both sides. While doing so, the Trial court should not influence itself by any observations in the order under challenge. In any event by consent of parties that order stands quashed and set aside. However, in so far as the application for temporary injunction is concerned, although there is an order passed of injunction that has been substituted by order of statusquo by this Court. Interest of justice would, therefore, be subserved if all parties to the suit maintain statusquo pending hearing and final disposal of Exh.99. Needless to clarify that to maintain statusquo means that the status quo order passed by this Court on 17th July, 2003 will continue.

6. All contentions of both sides with regard to legality and validity of the compromise terms are kept open and this Court has not expressed any opinion thereon. Needless to further state that if the application Exh.99 is allowed, then,

the suit must necessarily proceed. Needless, therefore, also to state that if the compromise terms are accepted, the Court is bound to pass appropriate orders in terms thereof. If application of the original plaintiff is allowed, then, temporary injunction granted by the Trial Court on 13th March, 2003 and as modified by order of statusquo of this Court shall continue and parties are thereafter at liberty to take such steps as are permissible in law for prosecuting the suit. Petition is disposed off. No costs.

(S.C.DHARMADHIKARI J.)